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REMARKS

Claims 1-29 remain pending where Claims 1-13 are under consideration for their merits and Claims 14-29 have been withdrawn from consideration. Claims 1 and 10 have been amended based on the disclosure on pages 3-8 and in FIGS. 4-6. No new matter is added. Reconsideration and allowance of the present application are respectfully requested.

Claims 1-13 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-10 of U.S. Patent No. 6,762,064. This contention, however, is respectfully traversed because the rejection is improper.

The present application and the cited U.S. Patent No. 6,762,064 have different inventive entities because Kazuhiro Tomioka, who is an inventor in the U.S. Patent No. 6,762,064, is not an inventor in the present application. Accordingly, the above non-statutory obviousness-type double patenting rejection requires the cited U.S. Patent No. 6,762,064 and the present patent application to be commonly owned at the time when the later invention was made. See, e.g., MPEP 304.

The cited U.S. Patent No. 6,762,064 is assigned to both Infineon Technologies AG and Kabushiki Kaisha Toshiba while the present patent application is assigned to Infineon Technologies AG only. These assignment records suggest that the cited U.S.

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Patent No. 6,762,064 and the present patent application were not commonly owned at the time when the inventions claimed in Claims 1-13 of the present patent application were made. Therefore, the above non-statutory obviousness-type double patenting rejection is improper and should be withdrawn.

Applicants further submit that Claims 1-13 as currently amended are distinctly different from and thus are patentable over the cited Patent No. 6,762,064.

Claim 1 as amended recites a method for fabricating a ferroelectric capacitor by providing a masking structure having sidewalls which are less tapered than the sidewalls of the hard mask shape. This addresses the problem in the prior art of producing capacitors with minimal sidewall tapering discussed in pages 1-2 of the application.

The cited U.S. patent 6,762,064, in contrast, does not teach or suggest the features of amended Claim 1 and fails to recognize the problem of forming ferroelectric capacitors with minimal sidewall tapering. In fact, the cited U.S. patent 6,762,064 seeks to solve an entirely different problem with an entirely different method, i.e., reducing the etch residues formed on the sides of an etched bottom electrode by rounding the corners of the second hard mask used to etch the bottom electrode layer.

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Therefore, the cited U.S. patent 6,762,064 is irrelevant and Claim 1 as amended is patentable.

More specifically, amended claim 1 recites:

"forming a substrate extending in a first plane and comprising a number of layers of material;
forming a hard mask layer on said substrate;
forming a first layer of a first material on said hard mask layer;
etching said first layer of first material and said hard mask layer to define a hard mask shape;
depositing a second layer of said first material over said etched first layer of first material and said etched hard mask layer to enclose said hard mask shape, said deposited second layer having side surfaces extending substantially perpendicular to said plane of said substrate thereby providing a masking structure having sidewalls which are less tapered than the sidewalls of the hard mask shape; and
shaping said ferroelectric capacitor device by etching said second layer and said number of layers forming said substrate."

The U.S. patent 6,762,064 fails to disclose or suggest these features as recited in amended Claim 1.

Therefore, Claim 1 as amended is distinctly different from the cited U.S. patent 6,762,064 and is patentable.

Claims 2-13 are patentable for at least the above reasons set forth for Claim 1.

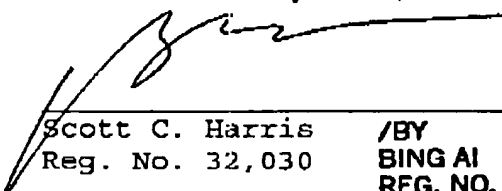
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Applicants respectfully submit that Claims 1-13 in
condition for allowance.

Please apply the \$120 extension of time fee, and any other
applicable charges or credits, to Deposit Account No. 06-1050.

Respectfully submitted,

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Scott C. Harris
Reg. No. 32,030

/BY
BING AI
REG. NO. 43,312

Fish & Richardson P.C.
PTO Customer Number: 20985
12390 El Camino Real
San Diego, CA 92130
Telephone: (858) 678-5070
Facsimile: (858) 678-5099
10484869.doc